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March 14, 2012

Honorable Kiyo A. Matsumoto
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Anthony Calabro, et al.
11 Cr. 30 (KAM)

Dear Judge Matsumoto:

This letter is submitted on behalf of defendant Anthony Calabro, who is scheduled to be sentenced before Your Honor on April 3, 2012. Mr. Calabro plead before this Court on July 20, 2011 in connection with the above-mentioned case. As you may recall Mr. Calabro desired to self-surrender in anticipation of his sentencing. He self-surrendered to the U.S. Marshals Service on August 3, 2011 and is being housed by the BOP at the MDC Brooklyn. As is my practice, I write to Your Honor to share my thoughts and the thoughts of others about the person you will be sentencing.

I submit herewith various letters from Mr. Calabro's family, friends and acquaintances which will afford Your Honor an opportunity to gain positive insight into his character, achievements and accomplishments. Your Honor life teaches us that nobody is purely a saint or purely a sinner; some tending more toward one end of the spectrum or the other. After knowing Mr. Calabro and his family, I can confidently state to this Court that Anthony Calabro is a person whose good deeds, commitment to help others in need and his devotion to his family demonstrates that he should be viewed as positioned high up on the plus side of the spectrum.

I write to urge this Court to sentence Mr. Calabro to a lenient term of incarceration. This submission will set forth facts that I earnestly contend warrants that Your Honor exercise discretion in granting Mr. Calabro such a sentence.

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I reiterate the objections made to the Probation Department in a letter dated February 29, 2012 and urge Your Honor to amend the Pre-Sentence Report to reflect the same.

The Plea Agreement

As intended by the parties' Plea Agreement, Anthony Calabro should be sentenced in the range of 37-46 months if the global disposition reduction applied¹. It was understood between the Government and the defense that a multiple grouping analysis should be undertaken with respect to the counts.² It was further understood that the acceptance of responsibility reductions should be applied.

The following is an analysis of the guideline calculations in accordance with the parties' understanding:

RICO Conspiracy

Racketeering Act 3 (Wire Fraud)

Base Offense Level	(2B1.1 (a)(1))	7
Plus:	Loss exceeded \$400,000.00 (2B1.1 (b)(1)(H))	+14
Plus:	Committed through Mass Marketing (2B1.1 (b)(2)(a)(ii))	<u>+4</u>
Total:		25

Racketeering Act 24 (Extortionate Extension/ Collection of Credit)

Base Offense Level	(2E3.1(a))	<u>20</u>
Total:		20

¹ It is understood that the Government will move this Court for a 2-level reduction for a Global Disposition.

² The defendant objects to the Probation Department's inclusion of racketeering activity not contained within the Superseding Indictment that Mr. Calabro has plead guilty to.

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Multiple Grouping Analysis(3D1.4)

Highest Adjusted Offense Level	25
Units: Racketeering Act 3 (3D1.4(a))	1
Racketeering Act 24 (3D1.4(b))	<u>1/2</u>
Total Units:	1½
Levels added:	1

Adjusted Offense Level

Adjusted Offense Level	26
Less: Acceptance of responsibility (3E1.1(a))	<u>-3</u>
Total:	23
Less: Global disposition (5K2.0)	<u>-2</u>
Total:	21

Therefore, Anthony Calabro's adjusted offense level is a 21, provided that he falls within a criminal history category I and thus he should be sentenced in the range of 37-46 months. Significantly the Government did not oppose a sentence within that range when negotiating and entering the plea agreement.

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The Offense Conduct

Mr. Calabro pled guilty to a RICO Conspiracy specifically to Racketeering Acts that charged a conspiracy to commit wire fraud and a conspiracy to use extortionate means to collect an extension of credit.

Wire Fraud Scheme

Mr. Calabro engaged in a scheme to defraud between 1995 and 2000. The scheme operated in the following manner. Co-conspirators held themselves out to potential borrowers as lenders and by means of fraudulent representations induced these borrowers to apply for loans. As part of the scheme the co-conspirators would place advertisements for loans attracting said borrowers with bad credit history in newspapers and on the internet. Said borrowers would phone the so-called lenders whereby they would provide the necessary information to complete a loan application. In a follow-up telephone call the so-called lenders would represent to the borrowers that their loan application had been approved but that because of their credit history one or two installment payments had to be made on the loan prior to the loan being funded. The so-called lenders kept these initial payments but loans were never funded.

Extortionate Extension/Collection of Credit Conspiracy

Mr. Calabro engaged in a conspiracy to collect extortionate loan money owed to his brother Dino Calabro after Dino's arrest in 2008. Mr. Calabro would pick up the money as per his brother's instructions and turn the proceeds immediately over to Dino's wife Andrea. Mr. Calabro did not profit for his acts.

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Criminal History

We respectfully wish to clarify the events surrounding his arrest in 1996. We submit that Mr. Calabro did not receive a conditional discharge on his first Court appearance in July of 1996. His recollection of the arrest and conviction is as follows. He was arrested in July 1996. On that day he recalls being given a Court date, to appear, in August. He wrongfully neglected to appear in Court on that date in August and as a result a Bench Warrant was issued for his arrest. He was re-arrested and returned on the Bench Warrant in October of 1996. It was at that Court appearance that a disposition was reached. He pled and was sentenced to 30 days in Custody.

We therefore respectfully object to the Probation Department's determination that Mr. Calabro committed the instant offense while on Conditional Discharge and therefore object to the 2 additional criminal history points being added as per Guideline §4A1.1(d). We maintain that Mr. Calabro's 1996 conviction results in 1 criminal history point and that his criminal history category is I.

If upon review of the facts and law articulated above, this Court determines that Mr. Calabro is in fact properly placed in a Criminal History Category II we submit that this category over-represents the seriousness of the defendant's criminal history and that this Court should depart and sentence him in a Criminal History category I.

Defense counsel often attempt to shift the burden of their client's hardships on to the shoulders of the sentencing Judge. I acknowledge that I, and perhaps some of my colleagues, sometimes hope to gather sympathy in situations which are not dire or are not extraordinary. Please accept my representation that the case of Anthony Calabro is extraordinary.

When considering the crimes that Mr. Calabro has been convicted of, the difference in Criminal History Category I and a Criminal History Category II is quite dramatic. For example, a Level 21, Criminal History Category I has a guidelines range of 37-46 months whereas a Level 21, Criminal History Category II has a guideline range of 41-51 months. The disparity between the two categories may seem minimal at first glance but to a young family like Anthony Calabro's it is the difference between being there as your children celebrate another birthday or holiday or play another game of little league.

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Mr. Calabro's Employment History

Mr. Calabro has maintained gainful employment since the year 2000. In or about 2000 through 2002 he was employed as a laborer with Local Union 66. From 2002 to his arrest he was employed as a carpenter with the Local Union 926 in Brooklyn.

Mr. Calabro has demonstrated that he is a hard-working and dedicated man. His foreman and co-workers all describe his good work ethic in their letters to this Court.

Mr. Ioannis Mousouroullis, Anthony's foreman states:

“Anthony and I have worked together for ten years on construction sites in New York such as Newtown Creek filtration plant, Bank of America building in Times Square and One World Trade where we have been for the past four years.

...

Anthony's work ethic is second to none. His responsibilities on site were great and his performance above and beyond.

...

There is definitely a hollow spot in our tight knit crew. He is not the type you need to ask for help or a helping hand because if something comes up, he is the first in line to give a hand.

All of Mr. Calabro's co-workers echoes these feelings.

Mr. Ean Roberts (a co-worker) writes:

“He has proven to be an excellent co-worker with extra hands to spare. As a co-worker he is a team player and never falls short of lending a helping hand. Our line of work as construction workers can be grueling, hectic and very dangerous. Anthony is one of those guys who is always at the right place, at the right time.”

(See Letters from Forman and other co-workers collectively attached hereto as Exhibit A)

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Mr. Calabro's Background

Anthony Calabro is 36 years of age. He is one of four (4) boys born to his parents Anna and Vito Calabro. He was raised in Bensonhurst, Brooklyn where his father still resides today. He enjoyed a very close relationship with his mother during his childhood. She died in 1995. He still mourns her death. When he speaks of her - her life and death – his eyes still well up with tears. His father was not a bad father however, he was an absent father. He was as Anthony describes him a “workaholic”. He is however credited with teaching Anthony his trade. Anthony’s father was a private contractor and today Anthony is a carpenter. Anthony’s father wasn’t an abusive father and in fact he was a good provider. As a consequence, he wasn’t there to guide his sons and to maybe keep them in line. Thus the older of the brothers stepped up to fill the role of father figure – for young Anthony at least. The eldest brother being 7 years Anthony’s senior. Anthony’s mom knew in her heart that this was bad and that if Anthony continued to follow her eldest son it could only turn out badly for Anthony. But what could she do? She begged Anthony to stay away from Dino. She didn’t dare say these things to Dino.

Anthony’s Mom’s death was very difficult for him to deal with. She was diagnosed with colon cancer and succumbed to the illness some nine (9) months later. Anthony said she never fought the disease in essence she gave up after the diagnosis. She had no will to live as described by Anthony. His Mom was 49 years old when she succumbed to cancer and Anthony was 20 years of age.

Anthony’s childhood was not atypical for being born and raised in Bensonhurst, Brooklyn. He quit school in the 6th grade. This was done primarily at his oldest brother’s encouraging. He was afraid to refuse his brother. Dino wanted Anthony to be with him all the time - to rely on him and only him, to listen to him and only him. Anthony mistakened this control that Dino wanted over him as love. He looked at Dino as a father thus he respected and obeyed all that he was told by him. Anthony was often tormented and beaten as a young boy by Dino. Dino said he was teaching him. In reality, he was only controlling him and manipulating him. Anthony was not afraid of the beatings he followed and obeyed Dino out love and loyalty. He thought that was what he was supposed to do.

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It was not until he met Antonette DiVirgilio on August 18, 1998 and began to get to know her, her family and their way of life that he learned that maybe this blind loyalty to his brother was not right. He met Antonette at or around the time that her family was going through the most horrible thing a family could go through. Her dad was diagnosed with terminal brain cancer. For Anthony it was like watching his mother suffer all over again but there was one major difference in the way this family bonded together as opposed to the way his family reacted to his mother's illness. Antonette and her brother Freddy became closer to their parents. The respect and love that this family shows each other is amazing to Anthony. This was what family was supposed to be. There was no fear amongst the siblings. No blind loyalty. There was genuine respect and love. They truly and unconditionally cared for each other. Even on his death bed Donato DiVirgilio cared for his children and wife with love and respect. This was what Anthony wanted for his future. He wanted a family like Antonette's. They married on July 22, 2001 but not before Anthony found a real job. He began working as a laborer with Local Union 66 in or about the year 2000. He was employed with that Union until 2002 when he made a conscience decision to change Unions to avoid any misconstrued favoritism. He wanted to work and work is what he did. He wanted no favors from his brother or any of his brother's friends. In or about 2002 he transferred to Local Union 926 in Brooklyn and remained employed with that Union until his dismissal because of the instant case.

Dino did not make the decisions his brother Anthony was making easy. He continued to try and tug at his brother to remain loyal to him and not to his new wife. There were family struggles that at times boiled over into family arguments. Anthony was always taking his wife's side. Dino always growing more and more resentful of their marriage and the impact it had had on his brother. His brother wasn't hanging out with him anymore. He wasn't doing favors for him. He was going to work, working hard and going home to his wife.

Anthony and Antonette started a family soon after their marriage. They gave birth to their son Danny on November 11, 2003 and to their son Joseph on November 12, 2006. Danny turned 8 years old and Joseph turned 5 years old this past November.

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Anthony has taken the DiVirgilio approach to raising his boys. He is with them whenever he is not working. He includes his boys in everything that he does. He has a wonderful bond with his oldest son Danny. He has an indescribable connection with Joseph.

ANTHONY'S INCARCERATION and the EFFECT ON HIS FAMILY

Anthony has been a model inmate since he arrived at the MDC. He had encountered some medical issues upon his arrival at the institution. He experienced a dramatic weight loss during his first few weeks, extreme depression and anxiety. He had trouble sleeping. He was also experiencing extreme changes in body temperature often in "cold sweats". He sought medical treatment and was prescribed an anxiety medication but after several days he stopped taking said medication. He felt that the medication was making him too lethargic and unaware. He saw the Doctor again and was then prescribed Remeron. He continues to take this medication to date³.

Anthony made a decision early on that he would use his incarceration time productively. While at the MDC he completed his GED Program. He completed all the necessary preliminary testing and is now awaiting a date for the GED Test to be administered.⁴

Your Honor, it is not uncommon for a defendant to become emotional when speaking about his children. In this case, however, I respectfully submit that it is more powerful and more heart-breaking than in other instances. This defendant has struggled to overcome many hurdles. These hurdles are both emotional and physical ones. Some of the emotional hurdles I have previously described: Anthony had to fight to escape his brother's clutches, he had to learn to love and to be a father. Some of the physical hurdles have not yet been described by me.

³ Medical Record have been requested from the MDC but to date have not been received.

⁴ Documentation of completion of the GED program has been requested. My understanding is said documentation will only be provided upon successful GED Testing.

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Anthony and Antonette's son Joseph suffers from pervasive development disorder (PDD). This is a form of autism. His condition is diagnosed as a delay in the development of multiple basic functions including socialization and communication. Joseph has severely reduced social and communication skills. He has difficulty expressing what he needs and wants. He has difficulty using and understanding language.

Joseph has trouble interacting socially and becomes agitated if he is uncomfortable. He does not adjust well to any change in his routine. Heather Locurto, Joseph's Speech-Language Pathologist, described in a letter the "positive and reinforcing aspect" that the defendant has had on Joseph's treatment. She had the opportunity to witness how Joseph's demeanor would change for the better when his father would arrive home. She noted that Joseph made "remarkable progress" when he was with his father. Your Honor, all children need their fathers but for a boy with Joseph's condition the need is far greater. It was difficult to cultivate a relationship with Joseph. It took much work and persistence because he was so shy and withdrawn. Anthony would not give up. He was determined to not let his own fears and depression over Joseph's condition keep him from having a connection with his son. Now Joseph shares a very strong bond with Anthony. Joseph asks his mother every day "when is daddy coming home". He thinks he is away working and he wants to know why daddy just can't leave his job.

Ms. Locurto documented the effect that Anthony's absence would have on Joseph.

"It is crucial that Joseph's life remains as stable as possible to guarantee further progress. In order for this to occur, he will require the affection and love that only [the defendant] can offer him."

(See Letters regarding the Calabro children collectively attached hereto as Exhibit B)

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Joseph is at risk of being held back this year. His school recommends getting him tutoring outside of school but the Antonette cannot afford it so, she has been working with him for endless hours at home.

When Anthony was home Danny was like his shadow. They used to go fishing all the time together. He used to take them to the parks for walks, for bike rides, and to amusement parks because they loved to go on rides. He has a very strong bond with Danny since he was a baby. Danny is so upset, he also cries on a daily basis.

Danny is being treated by Jennifer Barreto, the School Psychologist since October 2012 to address these emotional concerns.

She writes about the impact that Anthony's incarceration is having on Danny:

"Danny is not with his father and the separation was impacting upon his behavior in school. He would come to school crying and upset.

...

Danny is keeping a journal to express his feelings and keep connected to his father."

Danny's teacher approached Antonette a few weeks ago asking her to consider taking him for therapy outside of the school. She expressed that the therapy in school is not enough for him because she sees him as being very sad in class and slacking on his work a little. She notices an overall change in his behavior.

In a follow-up letter regarding Danny's treatment Ms. Barreto states:

"I have been providing Danny Calabro with at risk counseling services to address significant emotional concerns. These issues have been impacting upon his overall academic performance.

...

Outside family therapy is also recommended."

(See Letters regarding the Calabro children collectively attached hereto as Exhibit B)

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Much is being done to comfort these boys in their father's absence. Antonette's brother is trying to be there as much as he can for his nephews in his brother-in-law's absence. So the boys spend much time with their uncle and their cousins. Whenever they are with their cousins and their Uncle Freddy and Aunt Enza it seems to upset them. When they leave them and are back home they cry because they say that they want to be a real family again like their cousins are. They have said it's not fair that their cousins have their daddy and they don't.

ANTHONY'S RELATIONSHIP with his FAMILY

Anthony even after his marriage to Antonette felt a sense of loyalty to his brother Dino. He felt a sense of loyalty to his family. That is how Anthony became entangled in the Extortion Conspiracy. When Dino was arrested he told his brother Anthony that he must pick up money owed to Dino and deliver it to Andrea in order to provide for Dino's family. It was not open for discussion. It put Anthony in a very bad position. He did not want to be involved in Dino's wrongdoings but he also felt the need to help his brother. He did what he felt he had to do. Today he accepts full responsibility for those actions. I assure you he is killing himself for going against his better judgment and allowing his brother to pull him in with guilt and mis-guided loyalty.

While Anthony maintains a strong relationship with his two other brothers he has no contact with Dino. Anthony is working on building a stronger relationship with his father but it is difficult for this family. The internal turmoil is heartbreaking. This has become brother against brother and where is a father's loyalty supposed to lie? Mr. Calabro loves all his sons and he is struggling with how to express that to all of them and their respective families.

I have watched Anthony struggle with his own feelings during this case. He has often asked me, "How could my brother do this to me? How could I let my brother do this to my family?" As an attorney who has dealt with many family situations I have never seen a family in so much pain. Unfortunately I do not have the answers for him.

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Anthony has many regrets. He dislikes the position he has put his wife in. This is exactly the life she warned him that she would not be involved in. He has shared with me many times that he fears she will leave him. I assure this Court that Antonette Calabro is not happy with her husband's choices and the unfortunate situation it has left her and her sons in but she supports him fully. She is struggling with why Anthony did what he did but she doesn't love him any less today. She knows that he had a misguided idea of loyalty and family love.

Antonette (Anthony Calabro's wife) explains the effect Anthony's absence has had on their family when she writes:

"Since he has been incarcerated it has been very stressful for me. It is hard to raise our two boys on my own. Everyday stresses seem to be magnified when you are alone. His absence has made me realize just how important he is to us and especially to the boys. I fear that by the time this ordeal is over for our family they will have been affected in ways that cannot be undone."

Antonette continues in describing the financial hardship her family faces:

"Financially it has not been easy. Anthony has been the sole provider for our family. Before our boys were born I worked as a special needs para in the NY Public School System. I have not been able to return to work since Joseph requires special care. I have no one available to watch him and the cost of after school for a special needs child would consume all of my pay."

(See Letter from Mrs. Calabro dated February 20, 2012 attached hereto as Exhibit C)

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Anthony wasn't immediately accepted into the DiVirgilio family. He had to prove himself to Mr. and Mrs. DiVirgilio. Antonette's mother took a strict position on allowing the marriage between Anthony and Antonette. She knew her husband would soon succumb to cancer and she did not want any more unnecessary heartache for her children. Her and her husband had worked diligently to raise two hard-working and law abiding children and she was determined not to let anyone take that from them.

She writes:

"Before he married my daughter I sat him down and told him that I didn't want my daughter to marry him, because of his brother's background. He assured me that he didn't have anything to do with his brother or the life that he was involved in. He specifically said "that's my brother, not me". I know Anthony to be hard working. Always coming home late, and putting in the overtime anytime it was offered to him. He worked out in the snow and rain, coming home drenched and soaking wet.

...

I know I admittedly hesitated on giving my blessing for my daughters marriage but Anthony has turned out to be a good father and husband and was always doing things with and for this whole family. I truly believe that coming into my family and marrying my daughter taught Anthony the true meaning of what family really is. Because he is so close to his children they are having a very hard time dealing with his absence."

(See Letters from Friends and Family collectively attached hereto as Exhibit D)

Anthony is described as a gentle and kind man by those who know him. But perhaps the most compelling description of his kindness comes from a man who came to know Anthony while fishing on a pier in Staten Island.

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Mr. Anthony Barone illustrates Anthony's gentle and caring demeanor in saying:

"I met Anthony Calabro in the fall of 2009 while fishing

...

He and I became friends and Anthony went to great lengths to help me as I was struggling with health issues. Anthony would leave the pier and meet me in the parking lot every time I arrived to help me with my fishing gear. He would assist me with walking onto the pier and would carry my things for me. He would help me bait my hook and cast my rod. Over the past two years, Anthony treated me with respect and was thoughtful of my needs. Anthony's kindness extended beyond the pier. For example, he offered to repair my concrete when I couldn't do it myself and he also offered to shovel my snow.

...

His support over the past two years has allowed me to continue to do something I love."

(See Letters from Friends and Family collectively attached hereto as Exhibit D)

I join Mr. Calabro's friends and family members in requesting that Your Honor consider the type of man that is described above, as well as the impact his incarceration has had and will continue to have on his family.

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Conclusion

Having known Antonette Calabro and her family for most of her life and getting to know Anthony over the course of this case, his goodness, devotion, commitment to help others, hard work and compassion ranks him among the highest persons I have known. He is truly a decent person. Although he acknowledged his guilt here – for which he is truly contrite and remorseful and considers “shameful” – his demonstrated positive activities should, it is respectfully submitted, weigh heavily in Your Honor’s ultimate determination of an appropriate sentence.

Your Honor, the defendant that will be standing before you is not the same person that participated in the crimes that he awaits sentencing on. As a matter of fact, he is not even the same person that was arrested on January 20, 2011. He has matured in so many ways.

I have watched him become overwhelmed at times with emotion especially when he spoke of his wife, his boys, his mother, father and brother. I watched him as tears welled in his eyes when he realized what he will be missing because of this incarceration – special events as well as everyday events in his sons’ lives. Most of all I watched as he felt the pain that he had inflicted on Antonette and the rest of his family. I felt it as he expressed true remorse and shame.

Your Honor, on the day of Mr. Calabro’s allocution, I know you also felt his shame and remorse as he broke down and could barely choke the words of his allocution out. It was at that moment that I understood why Mr. Calabro would put himself in the so-called “line of fire”. I understand now and I am respectfully asking this Court to understand the inner turmoil that continues to haunt him.

Anthony is my own brother’s age and it forces me to think about how easily my brother could have ventured down the so called wrong path in life if my father and mother were not there to guide him and rein him in when need be. Anthony never had that. He did not have that guidance. In fact he had just the opposite.

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Your Honor the defense doesn't look to blame neither Anthony's parents nor do we blame his older brother Dino. I make no excuses for Anthony and I am not looking to blame anyone for his actions but I believe that he started to grow up during the course of his marriage. I believe the love he found in his wife and her family helped him to realize the error of his ways.

I know he became aware that his environment was not working for him. I know because he told me on several occasions that he regretted what he had done and that he wanted to do better for his sons. I believe he regrets his misguided loyalty and ties he had to his brother. I believe he knew he had to make a break in order to start a new – legitimate life and that is why I believe in 2002 he transferred his Union jobs and tried to break his ties.

Your Honor if nothing that I have submitted on Mr. Calabro's behalf has moved you to be lenient when sentencing my client then I respectfully ask you to bear in mind that if Mr. Calabro is given a chance and fails it will be you that he comes in front of again for punishment.

Anthony Calabro is an intelligent man who made mistakes in life – mistakes that he has already paid dearly for – mistakes that he will continue to pay for not only for the duration of his incarceration but for the remainder of his life. I assure this Court that Anthony Calabro will never be in a situation that brings him in front of this Court or any other for criminal charges. Judge Matsumoto, under all the facts and circumstances described herein, I respectfully submit that Anthony Calabro's sentencing does present as one, which would warrant the exercise of this Court's discretion in granting a sentence at the low-end of his guideline range.

My belief is that Anthony Calabro is an extraordinary human being for whom I request that Your Honor consider imposing the most compassionate sentence that is appropriate.

Thank you for your patience.

Respectfully submitted,
Jean Marie Graziano
Jean Marie Graziano

cc: Elizabeth Geddes (via ECF and UPS)
Assistant United States Attorney

Allon Lifshitz (via ECF and UPS)
Assistant United States Attorney

Ms. Jill B. Polish (via ECF and UPS)
United States Probation Officer